



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MARCH 22, 2023

IN THE MATTER OF:

Appeal Board No. 627209

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective April 29, 2022, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed December 2, 2022 (), the Administrative Law Judge granted the claimant's application to reopen A.L.J Case No. 122-06083, and sustained the initial determination.

The claimant applied to the Appeal Board, pursuant to Labor Law § 620 (3), for

a reopening and reconsideration of the Judge's decision insofar as it sustained the initial determination disqualifying the claimant from receiving benefits on the basis that he voluntarily separated from employment without good cause. The Board considered the arguments contained in the written statements submitted by the claimant and on behalf of the employer. Due deliberation having been had, the Board has reopened and reconsidered the decision of the Administrative Law Judge.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed full time as an outreach coordinator by the employer for about 8 months. The employer is a center that

provides services to recovering addicts and individuals who have been incarcerated or have otherwise had dealings with the criminal justice system. The claimant's duties as outreach coordinator included recruiting individuals to participate in the program, developing an outreach plan and coordinating activities or recreational events, attending community meetings, supervising peers in recovery, and serving as a liaison between the employer and the community it serves.

About a month after his hiring in mid-August, 2021, the claimant offered to work on updating one of the employer's brochures. Although this was not part of the claimant's job duties, his supervisor, RW, agreed to let the claimant try. After multiple drafts, which included grammatical errors and mis-matched fonts that RW asked the claimant to correct multiple times, another employee prepared a brochure that was accepted by the employer. The claimant concluded that his ideas were not being considered because of his youth, and he confronted RW about this. RW responded that the claimant should stop thinking he was the smartest person in the room; the claimant told RW that her tone was rude; and RW indicated that if things did not change, they would not be able to work together. Around this same time, on September 18 or 20, 2022, the claimant observed RW criticizing one of his coworkers in a meeting. The claimant did not approve of RW's conduct, and shook his head in disapproval, which RW witnessed.

On September 25, 2021, the claimant was called into a meeting with RW and her supervisor, JD. At this meeting JD told the claimant that he should not have been shaking his head, and that other employees need to stand up for themselves. In addition, JD discussed with the claimant his approach to doing outreach, and the issues that the claimant and RW were having, with the claimant indicating that he thought RW spoke rudely to him regarding the brochure. JD attempted to resolve the conflict between RW and the claimant, and they apologized to each other. The claimant considered that JD did a decent job of attempting to alleviate the situation between him and RW.

On a date not established by the claimant, he was called into a meeting with HR after it was learned that he had discussed RW with a program participant. The claimant was told that this conduct was a breach of RW's privacy, and was not appropriate. In approximately February 2022, the claimant was reprimanded after one of the program participants was observed trying to take expired pastries off the premises. The claimant believed he received this reprimand because he had been seen talking with the participant earlier. On April 11,

2022, the employer gave the claimant a written Employee Action Notice (EAN) for insubordination, failing to follow directions, and poor job performance. The claimant was told that he was being put on probation for three months. On April 13, or 14, 2022, the claimant told RW that he was resigning to try to go back to school to pursue his education. By email on April 14, the claimant advised the employer that he was resigning effective April 28, 2022. The claimant stated that he was grateful for the experience he had working at the center, and would miss working with the members and staff.

OPINION: The evidence establishes that the claimant was separated from employment when he voluntarily resigned on or about April 13, 2022, effective April 28, 2022. The evidence fails to establish that the claimant had good cause for his voluntary separation from employment for unemployment insurance purposes.

Initially, we note that the claimant's testimony includes multiple inconsistencies, reducing the credibility of his testimony as a whole. For instance, although the claimant testified to having received "multiple writeups,"

which led him to expect that he did not have to contact Human Resources, but they would contact him about the problems he was having with RW, he is unable to specifically identify a single writeup until the one he received in February 2022 about a participant taking pastries from the center. It is noteworthy that this writeup as described by the claimant was not related to difficulties between the claimant and his supervisor. A further inconsistency exists in the claimant's statements regarding whether he went to HR with his complaints about how he was being treated. In a questionnaire completed by the claimant prior to the issuance of the determination, the claimant indicated that he did complain to Human Resources about his supervisor's

treatment of him and alleged discrimination. However, the claimant repeatedly testified that he did not go to HR, that he was waiting for HR to come to him, and that the only time he said anything to HR about the perceived treatment by his supervisor was in his exit interview, after he had resigned. Finally, the claimant is frequently unresponsive to direct questions, and was able to provide few specifics regarding the occurrences of alleged hostility.

We are not convinced by the claimant assertion, made for the first time at the hearing, that he resigned because of unsafe conditions at work caused by

dangerous individuals in the program. We note that the claimant was aware at hire that participants in the program were recovering addicts and individuals who had been incarcerated. Further, although the hearing Judge erroneously failed to receive the summary of the claimant's statement into evidence, the claimant does not dispute that he did not advise the Department of Labor that he quit due to dangerous working conditions. Rather, the reasons provided by the claimant prior to the issuance of the initial determination, were that he was discriminated against because he was young, and that his supervisor was verbally hostile and abusive to him.

This record does not establish words or actions that constitute discrimination. The employer's decision not to use the claimant's updated brochure, replete with uncorrected grammatical errors and mis-matched fonts, was not discriminatory, but was a reasonable business decision made by the employer. Since discrimination has not been established, these circumstances did not give the claimant good cause to resign for unemployment insurance purposes.

According to the claimant's testimony, the "main reason" for his resignation was the hostile work environment created by his supervisor, RW. Credible evidence fails to establish that RW treated the claimant in a hostile or egregiously inappropriate manner such that he had good cause to resign. Although the claimant generalized that RW's treatment of him was aggressive, rude and hostile, he recounts only two specific incidents of what he perceived as RW's hostility towards him. One related to RW's comments to the claimant after his brochure changes were not accepted by the employer, and one pertained to the employer's reaction to the claimant's expression of disapproval of the way RW was talking to another employee. Even accepting the claimant's version of those events as accurate, according to the claimant's testimony both events occurred in September 2021, and he attended a meeting to address those events with JD and RW on September 25, 2021, shortly after the claimant was hired, and seven months before he resigned. These facts undercut the claimant's contention that the work environment was so hostile that he had no recourse but to quit. In addition, the claimant testified that he believed JD adequately addressed any issues that arose between him and RW.

The claimant has not testified to, much less established, any subsequent specific instance of RW speaking to him in a tone that he felt was disrespectful or rude, or that created a hostile work environment. RW's occasional references to being disgruntled about her job, even if accurate,

are not sufficient to find that RW created a hostile work environment.

Claimant's submission on appeal of what he indicates are enhanced recordings of his supervisor speaking to other individuals will not be considered. In addition to such recordings being of little probative value, the claimant was given the time and opportunity to get better copies of the recordings before proceeding at the hearing. The claimant did not do so, yet stated that he was prepared to go forward without the recordings.

Since the claimant has not established either discrimination or a hostile work environment, his stated reasons for resigning from employment, good cause under the Labor Law has not been established for his resignation. Accordingly, we conclude that the claimant was separated from employment under disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge, insofar as the claimant applied for a reopening and reconsideration, is affirmed.

The initial determination, disqualifying the claimant from receiving benefits, effective April 29, 2022, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER